IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.V.K.BALI

WEDNESDAY, THE 6TH DECEMBER 2006 / 15TH AGRAHAYANA 1928

Crl.Rev.Pet.No. 479 of 1997()

CC.256/1989 of JUDL.MAGISTRATE OF FIRST CLASS, PALA
CRA.221/1992 of SESSIONS COURT, KOTTAYAM

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REVN. PETITIONER/APPELLANT/ACCUSED:

BABY, S/O.OUSEPH, RESIDING AT
PORUVELIKUNNEL VEEDU, KANAKKARI KARA
AND VILLAGE, KOTTAYAM.

BY ADV. SRI.SEBASTIAN THOMAS

RESPONDENT/RESPONDENT/COMPLAINANT:

STATE OF KERA;A, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR MR.P.RAVINDRA BABU

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 06/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V.K. BALI, C.J.

Crl.R.P.No.479 of 1997

Dated, this the 6th day of December, 2006

ORDER

V.K.Bali,C.J.(Oral)

The petitioner herein was tried with co-accused Mohanan for offences under Sections 457, 380 and 411 read with Section 34 of the Indian Penal Code. The charge framed against the petitioner was under Sections 457 and 380 of the Indian Penal Code whereas the charge framed against his co-accused was under Section 411 of the Indian Penal Code. The trial culminated into conviction of both the accused. Whereas the petitioner herein was held guilty for offences under Sections 457 and 380 IPC and sentenced to undergo rigorous imprisonment for two years each and also to pay a fine of Rs.1000/- each on both counts and in default of payment of fine to undergo simple imprisonment for three months more, his co-accused was held guilty under Section 411 IPC and sentenced to undergo rigorous imprisonment for one year, vide order 30th September, 1992 passed by the Judicial Magistrate of the I Class, Palai. The appeal

preferred by both the accused were dismissed vide order dated 3rd April, 1997 passed by the learned Sessions Judge, Kottayam. Against the order aforesaid Mohanan filed Crl.R.P.No.446 of 1997 which has already been allowed vide order dated 22nd September, 2005 passed by a learned Single Judge of this Court. The revision preferred by the petitioner comes up for hearing now.

2. Briefly put, the facts of the case reveal that the petitioner had committed theft of a table fan valuing Rs.300/- at 9 O' clock in the night of 14.4.1988 from the house of CW 1. He committed theft by pushing open the closed front door of the house and gained access through the door for the commission of theft. He handed over the stolen property to the co-accused. It is for this reason that whereas the petitioner was tried for the substantive offence of theft his co-accused was tried under Section 411 IPC for receiving the stolen property. The case against the petitioner is concededly based upon recovery of the fan said to have been made by the police pursuant to the disclosure statement made under Section 27 of the Evidence Act. Apart from that there is no other evidence against him. In so far as the co-accused, the recepient of the stolen article is

concerned, as mentioned above, he has already been acquitted. While dealing with the case of the co-accused of the petitioner it has been mentioned that the said accused had himself apprised the police with regard to the fan vide petition Ext.D1. He has sent a registered letter to P.W.4 informing that one Santhosh George along with another youngster on 2.1.1989 kept some articles in the beauty parlour of his sister on the promise that they will come back and take it back, but in spite of that they had not returned. The confessional statement is stated to have been made by the petitioner on 21.1.1989 far after the knowledge of the stolen fan lying in the beauty parlour of the sister of the co-accused of the petitioner. The learned counsel appearing for the petitioner contends that once the police already knew that the stolen article was lying at a specified place recovery of the same on the disclosure statement of the petitioner would be of no use and consequence to the prosecution to prove guilt against him. There cannot be any exception whatsoever to the contention raised by the learned counsel. Once, it is known to the police that the stolen property is lying at a specified place recovery thereof on the statement made by the

petitioner cannot be a fact said to have been discovered. As mentioned above, but for this evidence the prosecution relied upon no other evidence to prove the guilt of the petitioner. The revision merits acceptance. Ordered accordingly. Consequently the orders dated 30th September, 1992 and 3rd April, 1997 passed by the Judicial Magistrate of I Class, Palai and Sessions Judge, Kottayam respectively are set aside and the revision is allowed.

V.K. BALI,
CHIEF JUSTICE.

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